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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,913	09/30/2003	James W. Bigott	5246-000004/DVA	8985
28997	7590	07/28/2005	EXAMINER	
HARNESS, DICKEY, & PIERCE, P.L.C 7700 BONHOMME, STE 400 ST. LOUIS, MO 63105				STINSON, FRANKIE L
		ART UNIT		PAPER NUMBER
		1746		

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/674,913	BIGOTT, JAMES W.
	Examiner	Art Unit
	FRANKIE L. STINSON	1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 June 2005.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 2-15, 47-49 and 51-81 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 6-15, 52, 65-74 and 80 is/are allowed.

6)  Claim(s) 2-5, 47-55, 57-61, 63, 64, 75-79 and 81 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

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1. The indicated allowability of claims 2-4, 15, 47, 49 and 51-55 is withdrawn in view of the newly discovered reference(s) to Murdoch (U.S. Pat. No. 2,630,813), Anderson (U.S. Pat. No. 2,649,765), Schmitt-Matzen (U.S. Pat. No. 3,129,711), Sones et al. (U.S. Pat. No. 3,279,481), Athey et al. (U.S. Pat. No. 3,846,615), Hadden (U.S. Pat. No. 4,439,242), Sergio et al. (U. S. Pat. No. 6,521,180) and WIPO WO 93/01640.

Rejections based on the newly cited reference(s) follow.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 2-5, 49, 50, 64 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murdoch in view of either Sones et al. or Sergio et al.

Re claim 2, Murdoch is cited disclosing a kitchenware and surgical instrument (col. 1, lines 22-31) washing tank comprising a tank with a wall (top, bottom and sidewalls) that defines an enclosure for holding a fluid for washing kitchenware, outlets (33, 32) in the wall for directing fluid into the tank, an intake opening (17) in the tank, a pump system comprising a pump and a fluid conduit system coupling the pump between the intake opening and the outlets, whereby the pump is adapted to pump fluid from within the tank through the intake opening into the pump system and through the outlets into the tank at a flow rate that differs from the claims only in the recitation of the control system comprising a controller coupled to the pump system for causing the pump to pump fluid at at, least two different flow rates through the outlets, and controls to select between

the at least two different flow rates, wherein the controller is programmed with at least one preset program and wherein the control system allows the preset program to be selected and operated, the program controlling the controller to operate the pump through at least two timed cycles, with different flow rates. The patent to Sones is cited disclosing in an automated kitchenware washer comprising control means comprising a preset program for providing for two time cycles and at least two different flow rates (see col. 1, lines 39-48). Sergio discloses in an automated washer comprising a predetermined first and second flow rate (see abstract and col. 7, line 66 through col. 8, line 10 and col. 8, lines 42-52). It therefore would have been obvious to one having ordinary skill in the art to modify the device of Murdoch, to include a controller as taught by either Sones or Sergio, for the purpose providing of an adequate impetus of washing fluid to the specific type of article being washed and to ensure complete removal of the deleterious material. Re claim 3, Sergio discloses the dispensing of a cleaner. The dispenser is also believed to be inherent in Murdoch and Sones as is common in the art. Re claim 49, Murdoch, as proposedly, modified discloses the first greater flow rate and second flow rate as claimed. As for the intended use of preventing grease from settling onto the kitchenware, please note, Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “ [A]pparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original). Re claims 51 and 75, Murdoch, Sones and Sergio are

cited as applied to the subject matter of claim 2 above. As for the motor operating at 30 Hz, no patentable distinction in the operating frequency of Sones and that as instantly claimed. The inherent frequency in Sones is clearly the functional equivalent of the 30 Hz as instantly. Re claim 64, Sones discloses the preset program.

4. Claims 47, 59, 60, 61, 77 and 78 rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claims 2 and 51 above, and further in view of either Athey et al. or Hadden.

Claims 47, 59, 61, 77 and 78 define over the applied prior art only in the recitation of the controller for controlling the heater, the temperature detector and the fluid level sensor. Athey and Hadden are each cited disclosing in a kitchenware washer, the arrangement of providing a controller for controlling the heater, a temperature and fluid level sensors as claimed. It therefore would have been obvious to one having ordinary skill in the art to modify the washer of Murdoch, to include a heater control and temperature and fluid level sensors as taught by either Athey or Hadden, for the purpose of prevent overheating and flooding of the washer. It is old and well known in the art to provide such controls to effect an adequate wash process.

5. Claims 48, 63 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claims 2 and 51 above, and further in view of WIPO'640.

Claims 48, 63 and 79, define over the applied prior art only in the recitation of the alarm configured to notify the user when the temperature is above a predetermined temperature. WIPO'640 is cited disclosing in a dishwasher, the arrangement of

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providing an alarm in the event of an over temperature. It therefore would have been obvious to one having ordinary skill in the art to modify the wash of Murdoch, to include an over temperature alarm as taught by WIPO'640, for the purpose of preventing injury to the user and damage to the system.

6. Claim 53-55 and 81 rejected under 35 U.S.C. 103(a) as being unpatentable over Sones in view of Hadden.

Re claims 53 and 81, Sones inherently discloses the tank, the outlet, a pump system heater, a temperature sensor and the application of fluid at two different flow rates that differs from the claims only in the recitation of the preset program of heating the temperature equal to or greater than 150°F. Hadden is cited disclosing a washer where it is programmed to heat the water to a temperature equal or greater than 150°F. It therefore would have been obvious to one having ordinary skill in the art to modify the device of Sones, to include a program as taught by Hadden, for the purpose of ensuring proper sanitizing of the kitchenware and as required by manufacturing codes. Re claim 54, Sones and Hadden disclose the cover.

7. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claim 53 above, and further in view of WIPO'640.

Claim 55, defines over the applied prior art only in the recitation of the alarm configured to notify the user when the temperature is above a predetermined temperature.

WIPO'640 is cited disclosing in a dishwasher, the arrangement of providing an alarm in the event of an over temperature. It therefore would have been would have been obvious to one having ordinary skill in the art to modify the washer of Sones, to include

an over temperature alarm as taught by WIPO'640, for the purpose of preventing injury to the user and damage to the system.

8. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claim 53 above, and further in view of either Schmitt-Matzen or Anderson.

Claim 57 defines over the Sones only in the recitation of the plenum and hinged perforated closure. Schmitt-Matzen or Anderson is each cited disclosing an arrangement of providing a plenum (12 in Schmitt-Matzen and "D" in Anderson), having a hinged cover. It therefore would have been obvious to one having ordinary skill in the art to modify the device of Sones to include a hinged perforated closure as taught by either Schmitt-Matzen or Anderson, for the purpose of restricting food debris from entering an intake opening as is common in the art.

9. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claim 52, 57 above, and further in view of Hadden.

Re claim 58, Hadden is cited as applied in paragraph 6 above.

10. Claims 6-15, 52, 65-74 and 80 are allowed.

11. Claims 56 and 62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McKee, Nishibe et al., Atkinson, Japan'150, Lavoie et al., Lahey

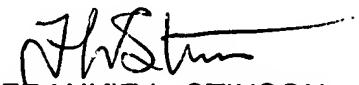
et al., Gobbato, Walter, Werneth, Bodenmiller et al., note the pressures and the controllers.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (571) 272-1308. The examiner can normally be reached on M-F from 5:30 am to 2:00 pm and some Saturdays from approximately 5:30 am to 11:30 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached on (571) 272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

fls



FRANKIE L. STINSON  
Primary Examiner  
GROUP ART UNIT 1746